



7555-01-P

## **NATIONAL SCIENCE FOUNDATION**

### **Privacy Act of 1974; System of Records**

**AGENCY:** National Science Foundation, Office of Inspector General

**ACTION:** Notice of a Modified System of Records

**SUMMARY:** Pursuant to the Privacy Act of 1974, the National Science Foundation (NSF) is providing notice of revisions to an existing system, NSF–52 “Office of Inspector General — Investigative Files.”

**DATES:** Sections 552a(e)(4) and (11) of Title 5 of the U.S. Code require that the public have thirty days to comment on the routine uses of systems of records. The new routine uses that are the subject of this notice will take effect 30 days after publication in the *Federal Register*, unless modified by a subsequent notice to incorporate comments received from the public.

**ADDRESSES:** You may submit comments, identified by [docket number and/or RIN number \_\_\_\_], by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: The Acting Senior Agency Official for Privacy, Dorothy Aronson, at [daronson@nsf.gov](mailto:daronson@nsf.gov). Include [docket number and/or RIN number \_\_\_\_] in the subject line of the message.

- Mail: Dorothy Aronson, Acting Senior Agency Official for Privacy, Office of Information and Resource Management, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314.

**FOR FURTHER INFORMATION CONTACT:**

Dorothy Aronson, Acting Senior Agency Official for Privacy, Office of Information and Resource Management, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314, or [daronson@nsf.gov](mailto:daronson@nsf.gov).

**SUPPLEMENTARY INFORMATION:**

Routine use 1 is changed to allow OIG to disclose records that may not indicate wrongdoing on their face, but in conjunction with other records may constitute evidence that wrongdoing occurred. It is also changed to clarify that disclosure recipients can include tribal governments. Other nonsubstantive changes are made to remove excess or redundant wording.

Routine use 2 is changed to advance oversight and accountability by permitting disclosure when deemed necessary to further OIG's investigative, audit, and inspection activities; and, following such activities, to facilitate institutional actions to address or prevent misconduct. Regarding the latter, we note that disclosure of information about administrative cases—including those cases that result in research misconduct findings—can be useful for NSF-funded entities affected by the investigation and/or outcome. For example, institutions employing involved individuals may need the information to effectively manage their personnel and to administer their research programs.

Routine use 3 is changed to clarify that disclosure recipients can include tribal governments and to remove excess or redundant wording.

Routine use 4 is changed to clarify that disclosure recipients can include tribal governments and to remove excess or redundant wording.

Routine use 6 is changed to refer to “research misconduct” rather than “misconduct in science”, to reflect the change in terminology in NSF’s regulation at 45 C.F.R. part 689 effective April 17, 2002. It is also changed to clarify that disclosure recipients can include tribal governments.

Routine use 11 is removed as an unnecessary routine use, given that the described disclosure is already permissible under the Privacy Act, 5 USC 552a(b).

Routine use 13 is added to enable OIG to release information to the public when: (a) the matter under investigation has become public knowledge because information about it is publicly available (as is the case with suspensions, debarments, convictions, or civil judgments), (b) the Inspector General or designee determines that such disclosure is necessary to preserve confidence in the integrity of the OIG investigative process, or (c) to demonstrate the accountability of NSF employees or other individuals covered by this system. We note that routine use 13 is consistent with uses published by other federal OIGs and represents a balance between privacy interests and the public’s interest in transparency. Disclosure of names pursuant to subpart (c) will help deter misconduct involving the Foundation and/or its funded activities. Public disclosure under this use would only be permissible after the Inspector General or designee initially determines that it would not result in an unwarranted invasion of personal privacy.

Routine use 14 addresses limited disclosures—to complainants, victims, and witnesses—in situations not covered by routine use 13, and is consistent with uses promulgated by

other federal OIGs. This use not only advances overall transparency, but, by keeping complainants and victims informed about cases in which they are involved, it will encourage individuals to come forward and to cooperate in future investigations. Providing witnesses with records they initially produced, or which contain their own statements or testimony, will, for example, assist the federal government in ongoing legal proceedings concerning the matter investigated.

**SYSTEM NAME AND NUMBER:**

Office of Inspector General — Investigative Files, NSF-52.

**SECURITY CLASSIFICATION:**

Unclassified

**SYSTEM LOCATION:**

Office of Inspector General, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

**SYSTEM MANAGER:**

Inspector General, OIG, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Inspector General Act, as amended, 5 U.S.C. app. §§ 4, 8G.

**PURPOSES OF THE SYSTEM:**

The Office of the Inspector General (OIG) for the National Science Foundation (NSF) maintains this system of records in order to conduct its responsibilities pursuant to the

Inspector General Act of 1978, as amended, 5 U.S.C. app. §§ 4, 8G. The OIG is statutorily directed and authorized to conduct and supervise investigations relating to programs and operations of NSF, to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and to prevent and detect fraud, waste and abuse in such programs and operations. Accordingly, the records are used in investigations of individuals and entities suspected of having committed illegal or unethical acts, and in any resulting criminal prosecutions, civil proceedings, or administrative actions.

#### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

In connection with its investigative duties, the Office of Inspector General (OIG) maintains records on the following categories of individuals: (a) Individuals or entities who are or have been the subject of inquiries or investigations conducted by OIG, including current and former employees of NSF; and current and former contractors (or applicants for contracts), subcontractors, consultants, or the recipients of (or applicants for) NSF grants or cooperative agreements, and their current or former employees, students, or collaborators; and (b) Individuals who are witnesses; complainants; confidential or nonconfidential informants; and parties who have been identified by OIG (on the basis of information received or developed by OIG) as potentially possessing information relevant to an investigation under the jurisdiction of the OIG.

#### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Information relating to investigations including: (a) Letters, memoranda, and other documents citing complaints or alleged criminal, civil, or administrative misconduct; (b) Investigative files, which include: reports of investigations to resolve allegations of

misconduct or violations of law or administrative or ethical requirements; exhibits, statements, affidavits, or other records obtained or generated during investigations; prior criminal or noncriminal records of individuals as they relate to the investigations; reports from or to other law enforcement bodies; information obtained from informants and identifying data with respect to such informants; nature of allegations made against suspects and identifying data concerning such subjects; and public source materials.

#### **RECORD SOURCE CATEGORIES:**

The subjects of investigations; individuals with whom the subjects of investigations are associated; current and former NSF employees; federal, state, local, and foreign law enforcement and non-law enforcement agencies; private citizens; witnesses; confidential and nonconfidential informants; and public source materials.

#### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

These records may be disclosed as follows:

1. In the event that records indicate (on their face or in conjunction with other records), or may constitute potential evidence of, a violation or potential violation of a requirement, whether criminal, civil, regulatory, administrative, contractual, or ethical in nature, whether arising by statute, regulation, rule, order, contract, grant, cooperative agreement, or ethical practices or norms, the relevant records in the system of records may be disclosed, as a routine use, to the appropriate entity, whether governmental (federal, state, local, tribal, or international) or non-governmental, charged with the responsibility of investigating or prosecuting such violation or potential violation, or charged with enforcing, implementing,

or complying with such statute, regulation, rule, order, contract, or ethical practices or norms.

2. Disclosure may be made to appropriate entities, whether governmental (federal, state, local, tribal, or international) or non-governmental, or to an individual (a) when deemed necessary to further the conduct of OIG investigative, inspection, or audit activities, including instances in which disclosure is necessary to elicit information, or (b) following such activities, when deemed necessary to facilitate institutional actions to address or prevent misconduct.

3. Disclosure may be made to a federal, state, local, tribal, or international entity maintaining civil, criminal, or other relevant information if necessary to obtain information relevant to an OIG decision concerning the assignment, hiring, or retention of an individual and/or employee or disciplinary or other administrative action concerning an employee, the issuance or revocation of a security clearance, the reporting of an investigation of an individual and/or employee, or the award of a contract, grant or cooperative agreement.

4. Disclosure may be made to a federal, state, local, tribal, or international entity in connection with the assignment, hiring, or retention of an individual and/or employee, or disciplinary or other administrative action concerning an employee, the issuance or revocation of a security clearance, the reporting of an investigation of an individual and/or employee, or the award of a contract, grant or cooperative agreement or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5. Disclosure may be made to the Office of Personnel Management or the Merit Systems Protection Board (including the Office of the Special Counsel) of information relevant and necessary to carrying out their functions.

6. In the event OIG is aware of information about possible research misconduct, disclosure of relevant records may be made by OIG to institutions or entities that have proposed or received contracts, grants, or cooperative agreements so that they can conduct inquiries and investigations into possible research misconduct pursuant to 45 CFR part 689.

7. Disclosure may also be made to independent auditors, contractors, experts, and other individuals who perform a service to or work on or under a contract, or other arrangement with or for the federal government, as necessary to carry out their duties. Such contractors will be required to maintain Privacy Act safeguards with respect to such records.

8. Disclosure may be made to another federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

9. In the event that OIG deems it desirable or necessary, in processing a Freedom of Information Act or Privacy Act request, disclosure may be made to the Department of Justice or the Office of Management and Budget for the purpose of obtaining its advice.

10. Disclosure may be made to the Department of Justice, to the extent it is compatible with the purpose for which the record was collected, and is relevant and necessary to litigation or anticipated litigation, in which one of the following is a party or has an interest:

(a) NSF or any of its components; (b) an NSF employee in his or her official capacity; (c) an NSF employee in his or her official capacity when the Department of Justice is representing or considering representing the employee; or (d) the United States, when NSF determines that litigation is likely to affect NSF.

11. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

12. Disclosure may be made to representatives of the General Services Administration and the National Archives and Records Administration who are conducting record management inspections under 44 U.S.C. §§ 2904 and 2906.

13. Unless the Inspector General or designee determines that disclosure of the specific information, in the context of a particular case, would constitute an unwarranted invasion of personal privacy, disclosure may be made to the public (a) when the matter under investigation has become public knowledge because information about it is publicly available, (b) when the Inspector General or designee determines that such disclosure is necessary to preserve confidence in the integrity of the OIG investigative process, or (c) to demonstrate the accountability of NSF employees or other individuals covered by this system.

14. Disclosure may be made to (a) complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the results of the investigation or case arising from the matters about which they complained and/or with respect to which they were a victim, and (b) to an individual who has been interviewed or

contacted by OIG pursuant to an investigation, audit, or inspection, to the extent that OIG may provide copies of that individual's statements, testimony, or records produced.

#### **POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

These records are stored in a variety of media, primarily consisting of file folders, and computer storage equipment.

#### **POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

The records are retrieved by the names of individuals involved in the investigation or by a unique control number assigned to each investigation.

#### **POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

The Investigative Files are retained in accordance with OIG's records retention schedule.

#### **ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

The paper records are kept in OIG offices within limited access areas of the National Science Foundation during duty hours, and in locked offices at all other times. Passwords are required to access the computer storage equipment.

#### **RECORD ACCESS PROCEDURES:**

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. § 552a(j)(2) or -(k)(2). To the extent that this system of records is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. Access requests must be sent to the Privacy Act Officer in accordance with procedures found at 45 C.F.R. part 613.

## **CONTESTING RECORD PROCEDURES:**

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. § 552a(j)(2) or -(k)(2). To the extent that this system of records is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Requests must be sent to the Privacy Act Officer in accordance with procedures found at 45 C.F.R. part 613.

## **NOTIFICATION PROCEDURES:**

The Privacy Act Officer should be contacted in accordance with procedures found at 45 C.F.R. part 613.

## **EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

This system is exempted from 5 U.S.C. § 552a except subsections -(b); -(c)(1) and -(2); -(e)(4)(A) through -(F); -(e)(6), -(7), -(9), -(10), and -(11); and -(i) under 552a(j)(2) to the extent the system of records pertains to enforcement of criminal laws; and is exempted from 5 U.S.C. § 552a(c)(3), -(d), -(e)(1), -(e)(4)(G), -(H), and -(I), and -(f) under 5 U.S.C. § 552a(k)(2) to the extent the system of records consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. § 552a(j)(2). These exemptions are contained in 45 C.F.R. part 613.

## **HISTORY:**

69 Fed. Reg. 29703 (June 2, 1999).

Dated: February 12, 2018.

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